

ORDINANCE NO. 05-604-O**AN ORDINANCE PROVIDING FOR REGULATIONS FOR PUBLIC RIGHTS OF WAY; REQUIRING PLAN REVIEW AND PERMITS FOR WORK WITHIN THE RIGHT-OF-WAY; REGULATING CONSTRUCTION WITHIN THE RIGHT-OF-WAY; REPEALING ORDINANCE NO. 506.**

The City of Columbia City ordains as follows:

ARTICLE 1: REGULATORY AUTHORITY OVER RIGHTS-OF-WAY**Section 1.1: Definitions.**

City: The City of Columbia City, Oregon.

Excavation: Digging, scooping, hollowing out or any other removal of soil or earth.

Permittee: The person authorized to make excavation in public right-of-way, including the person who seeks to have the excavation made and his or her agent.

Person: An individual, corporation, association, firm, partnership, joint stock company, limited liability company, or any other entity in law or fact.

Public Improvement: Any street, sidewalk, curb, gutter, sewer line, water line or other public improvement which is located in public right-of-way and which will be dedicated or otherwise transferred to the City at the time the improvement is completed, or any other improvement over which the City has regulatory authority.

Public Rights-of-Way: Any real property owned by the City that is used for the free and unimpeded passage of the public; any lesser interest in real property held by the City which contains a grant for the free and unimpeded access by the public across such property. Public rights-of-way include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, public trails and paths, and all other easements which provide the public with a right of access or give the City the right to construct, maintain, repair and operate a public improvement. As used in this Ordinance, public rights-of-way include subsurface and air space over the property.

Section 1.2: Jurisdiction.

A. The City of Columbia City has jurisdiction, and may exercise regulatory control, over all public rights-of-way within the City under the authority of the City charter and state law.

B. The exercise of jurisdiction and regulatory control pursuant to this section does not obligate or create an obligation for the City to maintain, repair or improve any part of or improvement in public rights-of-way.

Section 1.3: Regulatory Control. The City has jurisdiction and exercises regulatory control over each public right-of-way whether the City has a fee, easement, or other legal interest in the right-of-way. The City has jurisdiction and regulatory control over each right-of-way whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

Section 1.4: City Permission Requirement. No person may use, occupy or otherwise encroach upon public rights-of-way subject to the jurisdiction or regulatory authority of the City without first obtaining a franchise, license or permit, as the case may be, from the City for such occupation or encroachment.

Section 1.5: Restoration of Public Rights-of-Way. Whenever a person performs any work which affects a public right-of-way, the person shall, at the person's sole expense, promptly restore such right-of-way to as good as condition as existed before the work was undertaken, unless otherwise directed by the City. If the person does not promptly restore such right-of-way, the City may cause the restoration to be made, and the costs of such restoration assessed against the person.

Section 1.6: Fees. Except as otherwise provided in this Ordinance, the City Council shall, by resolution, establish fees and other charges for permits, plan checks, and other activities by persons performing work in or otherwise utilizing public right-of-way.

Section 1.6: Obligations of the City. The exercise of jurisdiction and regulatory control over a public right-of-way by the City is not official acceptance of the right-of-way, and does not obligate the City to maintain or repair any part of the right-of-way. Property owners on unimproved streets are responsible for maintenance of the right-of-way. [Amended by Ord. No. 20-716-O, 04/20/2020]

ARTICLE 2: EXCAVATIONS IN RIGHTS-OF-WAY

Section 2.1: Excavation Permits.

A. Except as otherwise provided by ordinance, no person shall make any excavation or tunnel under any area within public rights-of-way without first obtaining an Excavation Permit from the Public Works Superintendent. Utilities operating under a franchise agreement with the City are exempt from this subsection. These utilities shall obtain a Utility Permit from the Public Works Superintendent for excavations within the rights-of-way.

B. Nothing in this section shall prevent emergency excavation necessary for the immediate preservation of life or property, for locating trouble in conduit or pipe or for making emergency repairs; provided, however, that any person

making such emergency excavation applies for and receives a permit on the first working day after which the work is commenced.

C. Applications for Excavation Permits shall be made on forms provided by the City. The application shall describe the purpose, location, and size of the anticipated excavation, the name of the person performing the actual excavation, and the name of the person for whom the excavation is being performed. The application shall contain a provision endorsed by the person for whom the excavation is being performed or the person's agent, and that the person performing the excavation will comply with the requirements of this ordinance and any conditions imposed upon the excavation.

D. The application shall be accompanied by a cash deposit, performance bond, or other security to insure proper restoration of the public right-of-way. The bond or other security shall be in a form acceptable to the City Attorney and in an amount approved by the Public Works Superintendent. From this security shall be deducted the expense, if any, incurred by the City in cleaning up and removing material and debris and restoring the public right-of-way. The balance, if any, shall be returned to the person posting the security after excavation is complete and the right-of-way has been restored to as good order and condition as the property was in immediately prior to the time excavation was undertaken.

Section 2.2: Manner of Excavation.

A. Permittee performing excavation shall excavate in such a manner so as to avoid unnecessary inconvenience or annoyance to the general public and occupants of neighboring properties. The permittee shall take appropriate measures to reduce, to the fullest practicable extent, noise, dust and unsightly debris. Between the hours of 6:00 p.m. and 7:00 a.m., the permittee shall not, except in case of emergency, use any tool, appliance or other equipment producing noise.

B. No permittee shall make any excavation at variance with, or in any way contrary to, the terms of the Excavation Permit issued therefore. Proper bracing shall be maintained to prevent the collapse of adjoining ground.

C. No unnecessary damage or injury shall be done to any tree or shrub or the roots thereof.

D. After excavation commences, the person performing the excavation shall proceed with diligence and promptly complete the work.

E. The permittee shall adequately barricade the area being excavated, and shall install sufficient warning signs and/or lights to protect the public.

Section 2.3: Inspection of Work. All excavation shall be inspected by the City. The Public Works Superintendent shall be notified before any work commences. The permittee shall not proceed until received authorization from the City at each step of the project as identified on the Excavation Permit.

Section 2.4: Clean Up. From time to time as may be ordered by the Public Works Superintendent, and immediately after completion of the work, the permittee shall, at the permittee's sole expense, clean up and remove from the site all refuse and unused material of any kind resulting from the excavation, and upon the permittee's failure to do so, the City may cause the clean up and removal to be made, and assess the cost to the permittee.

Section 2.5: Resurfacing. Unless otherwise provided for in the permit, all pavement resurfacing shall be inspected and approved by the City, and completed solely at the cost of the permittee. If the work fails inspection, the permittee shall rectify the problem within the time specified by the Public Works Superintendent. If the permittee fails to rectify the problem, the Public Works Superintendent may cause the resurfacing to be done, and the costs therefore assessed against the permittee.

Section 2.6: Emergency Excavation. When traffic conditions, safety or convenience of the public require excavation be performed on an emergency basis, the Public Works Superintendent shall have the authority to order at the time the excavation permit is issued that a crew and adequate facilities be employed by the permittee on a twenty-four hours basis such that the excavation may be completed as soon as practicable.

ARTICLE III: CONSTRUCTING IMPROVEMENTS IN THE RIGHTS-OF-WAY

Section 3.1: Construction Permit.

A. (1) No person shall construct, install or operate a public improvement within public right-of-way without first:

a. Obtaining a Construction Permit from the Public Works Superintendent. Such construction, installation or operation shall comply with all applicable State, County, City and local codes, rules and regulations, and standards and specifications.

b. Entering into a Maintenance Agreement with the City.

[Amended by Ordinance No. 06-617-O 2/17/06]

(2) Any person desiring to construct a public improvement within public right-of-way shall submit construction plans and specifications for the public improvement to the Public Works Superintendent. Construction plans and specifications shall be accompanied by a verification from a registered professional engineer or other qualified professional that the plans and specifications meet standards set forth in the applicable codes, rules and regulations, and may be subject to review and approval by the City Engineer at the discretion of the Public Works Superintendent. The permittee is responsible for payment of all City Engineering fees related to plan review.

(3) After receiving plan approval from the City, but prior to the commencement of construction of the public improvement, the person shall obtain a Construction Permit to work in the right-of-way and post a performance bond or other security of sufficient amount to ensure completion of construction. The Construction Permit shall require that the public improvement be completed within one year of the date of issuance, or the bond or other security will be forfeited. The proceeds from any such forfeiture shall be used by the City to complete the improvement.

(4) Improvement work shall not commence until after the City is notified, and if work is discontinued for any reason, it shall not be resumed until after the City is notified.

(5) All public improvements shall be constructed according to the plans and specifications approved by the City. Improvements shall be constructed under the inspection and to the satisfaction of the Public Works Superintendent and/or City Engineer. The City may require changes in typical sections and details in the public interest if unusual conditions arise during construction to warrant the change.

(6) At the time the public improvement is completed, the permittee shall provide the City with two sets of "as-builts" drawings certifying that construction was completed according to the approved plans and specifications, along with copies of all inspections or engineer's reports. As-built drawings shall also be submitted in electronic dwg format, AutoCAD 2000 or later version or an approved equivalent. [Amended by Ordinance No. 06-621-O 6/16/06]

(7) The permittee is responsible for payment of all City Engineering fees related to inspection.

B. If the permittee is unable to complete the improvement within the one-year period, the Public Works Superintendent may grant a one-year extension upon good cause shown. Extensions beyond the one-year period may be granted by the Council, upon good cause shown. Any extension shall be conditioned upon the permittee obtaining an extension of the bond or other security and providing adequate documentation of such extension to the City.

Section 3.2: Form of Bond or Other Security. The bond or security required by Section 3.2 shall be in the form of a surety or performance bond, a cash deposit, or letter of credit. The bond or other security shall:

- A. Name the City as the obligee;
- B. Be in a form approved by the City Attorney;
- C. Be of an amount approved by the City Engineer as sufficient to guarantee the work shall be done in accordance with City standards and specifications.
- D. Release shall be conditioned upon final approval of the development and transfer of the public improvement to the City by dedication or other instrument;

2-1.3.2

2-1.4.3

E. Provide full warranty for the improvements for a minimum of two (2) years after the date the improvements are formally transferred to the City.

F. Shall be subject to forfeiture if the permittee does not complete the improvements within the stated period or, if the person creates a hazard which poses imminent danger to public health or safety within the immediate vicinity of the improvement and the permittee fails to commence correction within twenty-four hours of the date notification of the danger is provided to the permittee by the Public Works Superintendent, in writing;

G. Shall cover all costs, liquidated damages and attorney's fees incurred by the City as a result of the permittee's failure to complete construction within the specified time or to correct a hazard posing imminent danger to public health or safety in a timely fashion.

ARTICLE IV: GENERAL

Section 4.1: Penalties.

A. Failure to comply with any provision of this ordinance is a violation, and shall be subject to a penalty not to exceed \$750.00 per violation. Each day that a violation continues after notice of the violation is provided shall constitute a separate and distinct violation.

B. (1) In addition to, and not in lieu of the foregoing penalties, the Public Works Superintendent may revoke any permit issued pursuant to this ordinance and file a claim against the permittee's bond for violation of any provision of this ordinance, and may disqualify any permittee who engages in repeated violations of this ordinance from obtaining a permit. Notice of the Public Works Superintendent's decision shall be provided to the permittee by mailing a copy of the notice of revocation by first class mail and certified mail with return receipt, to the permittee's last-known address.

(2) The permittee may appeal any decision revoking a permit or disqualifying the permittee from obtaining permits to the City Administrator/Recorder, by filing a notice of appeal, in writing, within fifteen days of the date of the Public Works Superintendent's decision.

(3) Appeal from the decision of the City Administrator/Recorder shall be to the City Council. The permittee shall file a notice of appeal, in writing, within fifteen days of the date of the City Administrator/Recorder's decision.

Section 4.2: Savings Clause. All permits issued prior to the effective date of this ordinance are hereby ratified, and shall be in full force and effect from and after the effective date of, and shall be subject to the terms of this ordinance.

[Section 4.3: Severability.] Passed by the Council February 3, 2005 and approved by the Mayor February 4, 2005.